

EC-2000-007
1U-D-136
Georgia Department of Natural Resources

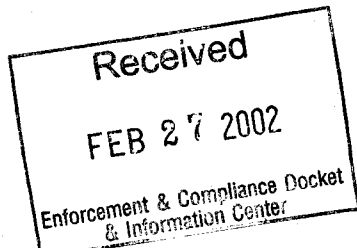
205 Jesse Hill Jr. Drive S.E. , East Floyd Tower, Atlanta, Georgia 30334

Lonice C. Barrett, Commissioner

Harold F. Reheis, Director

Environmental Protection Division

(404) 656-4713



February 12, 2002

Enforcement and Compliance Docket and Information Center
Mail Code 2201 A

U.S. Environmental Protection Agency

1200 Pennsylvania Avenue NW

Washington, DC 20460

Attn: Docket Number EC-2000-007

David Schwarz and Evi Huffer, Office of Environmental Information

Re: Comments on Establishment of Electronic Reporting: Electronic Records;
Proposed Rule

Dear Mr. Schwarz and Ms. Huffer:

The Georgia Environmental Protection Division (EPD) is pleased to respond the proposed Cross-Media Electronic Reporting & Recordkeeping Rule (CROMERRR) as published in the Federal Register on 31 August 2001 [66 FR 170 (p. 46162)].

EPD cannot support the U.S. Environmental Protection Agency's proposed rule. If promulgated, CROMERR will become expansive, expensive, and ineffective. I'll simply touch on a few areas of concern.

Expansive. EPD would support a more common and cohesive reporting system for environmental data across all federal and state environmental programs. Whether the proposed Common Data eXchange (CDX) concept will work at the EPA, we do not know. It's one set of challenges just collecting a variety of reporting forms, but another in translating and populating the myriad of stovepipe EPA data systems. In Georgia, we would not be willing to develop a similar concept of accepting electronic reporting until the concept is found beneficial and many operational problems are resolved. EPD would be challenged to integrate electronic reporting for all federal delegated and state environmental laws. However, we see there are potential benefits for electronic reporting. However, expanding this to include electronic record-keeping appears to us as trying to control a insignificant problem. If a regulated entity has environmental violations, EPD with the regulated entity will work toward correcting the problems, not trying to ascertain whether records are traceable and auditable. Many of our compliance tools do not solely rely upon the records as a means for identifying violations. EPD would recommend to the U.S. EPA to disentangle the records-keeping requirements from the proposed rule and strive to build commonly agreed upon reporting requirements that can promote collecting and assessing meaningful environmental results.

Expensive. Many have questioned EPA's cost and benefit calculations. We would like to point out that we believe the cost figures computed are not as precise as might be implied. That is, does EPA really know actual costs back two years and projected costs forward five years to five significant figures? Even if known to this degree of precision, the differences in reduced costs anticipated are minuscule (0.2%-3%) in comparison to the outlay. To be explicit, EPA anticipates regulated facilities would spend \$3,466,200,000 in FFY05 if CROMERRR was not enacted and \$3,357,700,000 if CROMERRR was enacted in FFY05. That results in the \$108.5 million of "savings" to regulated industries. We might be inclined to believe that this savings is well within the error of the estimates used to estimate the reporting and record-keeping costs. As a point of comparison, total United States Gross Domestic Product (GDP) in 2000 was about 9.963 trillion dollars. EPA's estimates of reporting and record-keeping is claimed to be about 0.03% of annual GDP. EPD recommends the study's underlying assumptions and calculations be revisited.

Ineffective. There has been much discussion regarding the voluntary versus mandatory effect of CROMERRR, if promulgated. Unless EPA wishes to receive electronic reports on behalf of delegated states, tribes or local environmental programs, then the state, tribe or local government must comply with the requirements set forth in CROMERRR section 3.2000. If the perceived benefits are demonstrated, then will some states put forth the time, effort and money needed to develop compliant electronic document receiving systems. Otherwise, states will opt-out. This then places another series of pressures on the federal-state environmental partnership and regulated-regulator partnership to assure environmental compliance through demonstrated performance. The tensions that may result do not bode well ... we all will be spending more time and energy debating data rather than assessing actions toward cleaner air, cleaner water, more productive land and healthier lives. EPD believes that a simpler, lower threshold, staged approach will garner more buy-in with the regulated community and with state, tribal, and local delegated environmental agencies.

The Georgia Environmental Protection Division commends the U.S. Environmental Protection Agency for beginning the dialog toward a more effective and efficient means of sharing environmental information. However, the proposed rules are not workable. We suggest you make the following changes to Cross-Media Electronic Reporting & Recordkeeping Rule:

* Change Subpart C (Electronic Recordkeeping under EPA Programs) to set up two levels of requirements for acceptable electronic records.

Level A would allow self-affirmation of an electronic signature on a transmitted electronic record only meeting the requirement #4 (name, date/time, explanation of signature) set forth in the remainder of that section. EPD believes that where the authenticity or the integrity of an electronic record or signature is challenged, the

proponent of the electronic record or signature shall have the burden of proving that the electronic record or signature is authentic. An example of a self-affirmation could be:

[Authorized representative name], [Regulated entity name]

[Date and time signed]

[Reason for electronic signature]

Affidavit of Authorized Representative: I certify that the attached report is to the best of my knowledge true and correct.

Level B requires full compliance with the requirements. If EPA or the States want to take on the burden of proving the authenticity or integrity of an electronic record, then the proposed rules would satisfy that burden. The full requirements include

- (1) generate and maintain electronic records that cannot be altered without detection;
- (2) maintain electronic records for entire length of retention period;
- (3) produce copies on demand in human or machine readable form;
- (4) provide that the signature include the name, date/time, and explanation of signature;
- (5) prevent the signature from being detached, copied or compromised
- (6) use secure computer-generated audit trails for creating or modifying any record;
- (7) ensure record changes do not obscure previously recorded information;
- (8) ensure records are searchable and retrievable for any use during retention period;
- (9) archived records must include the meta-data and audit trail information.

* Change Subpart D (Electronic Reporting and Recordkeeping under EPA-Approved State Programs) to set up two levels of requirements for acceptable electronic document receiving systems.

Level A would allow a subset of the full requirements for an electronic document receiving system to be acceptable. The subset of requirements include

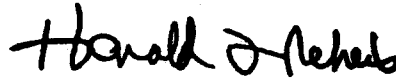
- (1) General system-security through unauthorized access and prevention of document modifications;
- (2) Data validity through assurance that alteration did not occur after receipt;
- (3) Electronic signature(s) must be present, but not verified through a registration process;
- (4) Confirmation of receipt of an electronic record;
- (5) Audit and archive of transactions notifying there was receipt of an electronic record.

Level B requires full compliance with Section 3.2000. If EPA or the States prefer to burden themselves with maintaining the full authenticity and integrity of any electronic record, then the proposed rules would satisfy that burden. The full requirements include registering any authorized representative's identity and electronic signature continually, the set up and maintenance of copy-back schemes to repeatedly provide full-acknowledgement of any electronic document and the development of a document transaction system to manage this electronic cross-flow.

February 12, 2002

Thank you for allowing the Georgia Environmental Protection Division to offer comments on this proposed rule.

Sincerely,



Harold F. Reheis, Director
Georgia Environmental Protection Division